

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

*Alone
PLM-II*

*34532
31544*

FILE: B-216748

DATE: June 24, 1985

MATTER OF: Effect of Discharge Delivery

DIGEST:

An enlisted marine who was placed on administrative hold and prevented from completing his processing out after he had been given his certificate of discharge claims pay for the period after that date during which he remained at the marine base on administrative hold pending court-martial charges. The court held that since he had been given his discharge before court-martial charges were brought he was not subject to its jurisdiction. The handing over of the discharge certificate was equally effective for administrative purposes and the individual's status as a member and right to further pay ended at that time.

We have been asked whether a former enlisted member of the Marine Corps is entitled to pay after he was issued a discharge certificate but while he was held pending court-martial.^{1/} The court-martial charges against the individual were dismissed on the basis that he had been discharged before those charges were brought. Since the facts show that he was discharged before the charges were brought, he was not a member of the Marine Corps after that date while being held for court-martial and, therefore, he is not entitled to pay for any period after that discharge.

During the latter part of 1983, the claimant had been given nonjudicial punishments for minor offenses which culminated in an Administrative Discharge Board determination that he should be separated from the service prior to the completion of his enlistment for minor disciplinary

^{1/} This matter was submitted by K. J. Wright, Disbursing Officer, Marine Corps Finance Center, Kansas City, Missouri, and was assigned control number DO-MC-1446 by the Department of Defense, Military Pay and Allowance Committee.

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infractions. This Board directed that he be discharged on or before December 9, 1983. On December 8 discharge papers had been completed and a discharge certificate was given to the member before he was given his final pay. Apparently, the original signed discharge form should not have been given the member prior to his reporting for final pay. However, before the member was to report for his final pay, a hold was placed on further action in his case because action was being taken to bring criminal charges against him based on suspected theft of a firearm. The member remained at the marine base and on December 22, he was reduced in grade from private first class to private.

In due course charges were brought, but a court-martial, on January 26, 1984, determined that the member was not subject to its jurisdiction because he had been effectively discharged before the criminal charges had been brought against him. The military judge held specifically that he had been given his final discharge certificate by an individual authorized to do so and, although this person may have given the discharge to him prematurely, it effectively terminated his status as a marine.

Thus, although the former member was detained from December 8, 1983, through January 26, 1984, he was, in the eyes of the court, not a member of the service during that period.

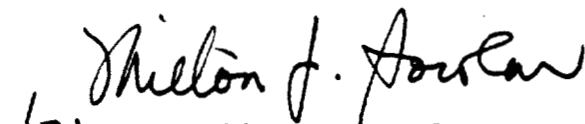
The right of a member of the armed services to pay is a statutory one and not one which depends upon the rules governing ordinary contractual relationship. Bell v. United States, 366 U.S. 393, 401 (1961). It is fundamental that an individual must be a member of an uniformed service in order to be entitled to pay. 37 U.S.C. § 204; B-151189, April 19, 1963. If this former member lost his status as a member of the Marine Corps on December 8, 1983, his entitlement to pay as a marine also ended on that day.

We have held that the determination of a court-martial as to the status of an individual for jurisdictional purposes under the Uniform Code of Military Justice is not necessarily binding for administrative purposes. 57 Comp. Gen. 132 (1977). But if the court has considered all pertinent facts, the determination of the individual's status for administrative purposes will probably be the same as

determined by the court. 57 Comp. Gen. at 136. Although the facts in the cited case involved the question of whether individuals had been properly inducted into the service as opposed to whether they were effectively discharged, the rule that an individual is entitled to pay only if he or she is in fact a member at the time is the fundamental rule upon which the decision in that case was based. It was held that if the individual had not been properly inducted, he or she had no right to pay as a member. The de facto rule was applied to permit an individual to retain pay which had been received while serving under an invalid induction, but that rule does not permit the payment of further pay once the status of the individual as a non-member is clear.

In this case the member received his discharge certificate and, although he remained under military control because he was prevented from completing his processing out, he relied upon the discharge to escape prosecution for theft based on the argument that the discharge had been effective when given to him on December 8, 1983. We find that the delivery of the discharge certificate was valid also for administrative purposes and that it terminated his status as a marine. Thus, his entitlement to pay also terminated on December 8, 1983.

Accordingly, the former marine may not be paid for any period after December 8, 1983.


for Comptroller General
of the United States